

**STATEMENT BY**

**DEPUTY UNDER SECRETARY OF DEFENSE**  
**(ACQUISITION REFORM)**  
**MRS. COLLEEN A. PRESTON**

**ON**  
**ACQUISITION REFORM**

**BEFORE**

**COMMITTEE ON NATIONAL SECURITY**  
**UNITED STATES HOUSE OF REPRESENTATIVES**

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We build the best weapon systems in the world, thanks to the ability and dedication of the people in DoD and industry. We know, however, that they have achieved this success -- often not because of the system, but in spite of it. We can no longer afford to fight a bureaucratic and rule driven system -- we must be able to take advantage of the professionals we have in the acquisition workforce and allow them to exercise their judgment in making sound business decisions on behalf of the U.S. Government.

Additionally, new national security challenges require us to design a more flexible, agile, and timely acquisition process capable of meeting unpredictable needs. Declining budgets require us to become more efficient and effective, as well as to reduce the costs of our products and services. Finally, technology is developing at an even faster pace, is more often than not led by the commercial sector, and is available to the world. To maintain our technological superiority we must have access to the latest state-of-the-art commercial technology.

DoD, as an enterprise, must respond to these changes in every facet of how we accomplish our mission -- and the acquisition system is no exception. The bottom line is -- that we must design an acquisition system that can get out in front of these new challenges instead of reacting to them.

I appreciate the opportunity to be here today to address:

- what we are doing to totally reengineer the acquisition system to improve its responsiveness, reduce its cost, and facilitate the merger of the defense and commercial industrial bases;
- some of our accomplishments to date and a number of our on-going acquisition reform efforts; and finally,
- to highlight a few issues that we desperately need your help on -- because they require legislative changes this session.

Before getting into the substance of my remarks, I would like to say, on behalf of the Secretary of Defense, the Under Secretary for Acquisition and Technology, and all the men and women in the DoD acquisition community, that we genuinely appreciate the persistence of members of this committee in working with the House Government Reform and Oversight Committee and the Senate to pass *the Federal Acquisition Streamlining Act* last year. We all appreciate the fact that this is not a sexy issue and that solutions are complex and controversial. But the criticality of these reforms in terms of allowing DoD to reduce its infrastructure costs and avoid reductions in accounts that directly relate to our operational forces cannot be underestimated. Again, thank you for your continued support in this area.

## DoD's ACQUISITION REFORM VISION, GOALS AND ACTIONS

First, I would like to identify the four critical elements of our vision of DoD's reengineered acquisition system.

### **1. MEET WARFIGHTER NEEDS**

In addition to the more specific and actionable goals, there is one over-arching goal upon which there is no disagreement: **The primary mission of the acquisition system is to Meet Warfighter Needs -- we must never forget that meeting the customer's needs is paramount.**

### **2. WORLD'S SMARTEST BUYER**

The second of the five critical elements of DoD's vision of its reengineered acquisition system is to **be the World's Smartest Buyer**. We will utilize a reengineered acquisition process that encourages continuous learning and process improvement; where change is a constant rather than an exception; where there are incentives for personnel to innovate and to manage risk rather than avoid it; and where maximum advantage is taken of emerging technologies, particularly management information systems, that enable business process reengineering and enterprise integration. Bottom Line: We must emulate the best practices of world class customers and suppliers, develop our own best practices, and become the most efficient buyer possible. In order to do that we must be

able to eliminate, to the maximum extent practicable, government unique terms and conditions, unless that particular aspect of the buyer-seller relationship is not adequately “regulated” by market forces; the financial and ethical integrity of the government acquisition process is not adequately protected; or the furtherance of national domestic policies justify the use of a government-unique term or condition. If so, there should be a better balancing of the risk of abuse of the process and the benefits of socio-economic gains to be achieved, with the cost of compliance with government-unique rules for both the government and industry.

### **3. PROCURING BEST-VALUE GOODS AND SERVICES**

DoD will ***Procure Best-Value Goods and Services***, by buying from world class suppliers, who are part of a national, as opposed to defense unique, industrial base, composed predominantly of commercial or dual-use suppliers capable of meeting DoD’s needs and willing to sell to the U.S. government; and by using commercial practices to the maximum practicable extent, in order to ensure access to state-of-the-art technology, reduce the cost of products and services to the government, and reduce acquisition lead-times.

### **4. MOST RESPONSIVE (TIMELY & FLEXIBLE)**

DoD will establish and maintain the most responsive -- both timely and flexible acquisition system, where success is judged on the basis of performance related metrics -- did we meet our customers needs - both in terms of product or service required and the time needed -- rather than simple adherence to regulations.

## **ACTIONS TAKEN OR IN THE PROCESS OF BEING IMPLEMENTED:**

- Secretary Perry's memorandum: *Acquisition Reform: A Mandate for Change* , set the stage for our re-engineering efforts.
- Secretary Perry's memorandum: *Use of Integrated Product and Process Development and Integrated Product Teams in DoD Acquisition* , captured many of the best practices from both the public and private sectors, and established them as policy within the DoD.
- Creation of the Acquisition Reform Communications Center to coordinate and facilitate acquisition workforce education and training efforts--getting the right message to the right audience, the right way and at the right time. Their most notable endeavor thus far was a satellite broadcast on June 28, 1995, that trained approximately 20,000 government and industry personnel on the implementation of the provisions of FASA '94.
- Providing incentives for acquisition personnel to innovate, while providing appropriate guidance, and the benefit of "lessons learned" in the past, by redesigning the purpose and approach of both the Federal and DoD acquisition regulations and policies, so they can better facilitate the acquisition process. Initial development efforts have started on an Automated Acquisition Information System composed of an "Acquisition Reference Set" or "Systems Acquisition Deskbook," "Interactive Tools," and a "Catalog"; rewrite DoDD 5000.1 and DoDI 5000.2; proposed rewrite of the Federal Acquisition Regulation.

- Creation of a DoD and government-wide Electronic Commerce/Electronic Data Interchange System for contracting that will provide “one face to industry).
- Secretary Perry’s memorandum of June, 1994 requiring use of performance specifications; military specifications and standards are authorized only if waived by the Milestone Decision Authority.
- Use commercial practices to acquire military unique items, as well as commercial items, to the maximum extent practicable. (Pilot Programs authorized in FASA ‘94).
- Establish and maintain more effective working relationships with industry through use of Integrated Product and Process Teams. (Policy memorandum on May 10, 1995, by Secretary Perry as a result of the Oversight and Review Process Action Team report; input from the Defense Manufacturing Council meeting with DoD Program Managers, Program Executive Officers, and Systems Command Commanders).
- Maximizing the use of simplified acquisition procedures. (FASA ‘94)
- Under Secretary Kaminski’s memorandum: *Reengineering the Acquisition Oversight and Review Process*; reduces unnecessary oversight and review of the systems acquisition process through implementation of the Oversight and Review Process Action Team recommendations. The net result of this is a shift toward early insight on program issues and activities, rather than after-the-fact oversight.

- Making DoD value-added team participants not “second guessers” or inspectors (both in relation to other organizations in the Department, and with respect to DoD’s suppliers. (Implementation of Contract Administration Process Action Team recommendations).
- Streamlining and making more effective and realistic developmental, live-fire, & operational testing.
- Shifting from after-the-fact inspections, to government review of contractor process controls and review of output. (Issuance of SECDEF memo authorizing use of ISO 9000 standard in place of MilQ 9858A).
- Ensuring that DoD emulates the best procurement practices (e.g., timely, responsive, flexible and efficient) of world-class customers and suppliers including rewarding past contractor performance in source selections).
- Eliminating functional stove-pipes and replacing them with integrated decision teams that provide the necessary cross-section of functional “expertise” and organizational input to address and resolve acquisition issues at the lowest possible management level.
- Establishing clear process and outcome (performance-related) measures to determine success of change efforts.



## **IMPLEMENTATION OF THE FEDERAL ACQUISITION STREAMLINING ACT OF**

### **1994**

The regulations to implement the Federal Acquisition Streamlining Act of 1994 (FASA 94) in the Federal Acquisition Regulation (FAR) were grouped into 28 rule making cases. Three of the cases were subsequently integrated into other cases leaving a total of 25 such cases.

To date, six final rules have been published. One case has been published as an interim rule, the Simplified Acquisition Threshold/FACNET case, meaning the acquisition workforce is able to take advantage of its provisions now rather than waiting for the final rule to be published. We anticipate publishing an additional six final rules next week. . Two cases are pending the Administration's approval before final publication, and we are finalizing eleven additional cases for publication in the late August time period.

Within the Department of Defense, we are implementing Defense unique provisions in several ways -- within the Defense Federal Acquisition Regulation Supplement (DFARS), through changes to Departmental Directives and Instructions, and in Memoranda from the Secretary or Under Secretary of Defense.

## **ADMINISTRATION PRIORITY ITEMS FOR 1995 LEGISLATIVE ACTION**

There are a number of legislative changes the Department believes are critical to its continuing efforts to reengineer its acquisition processes and attain the vision outlined above. I have included in my written testimony an explanation of as many of the proposals in the administration request, introduced as H.R. 1670, and those proposed for inclusion in the FY96 National Defense Authorization Bill as possible. Today, I would like to highlight for you only the top priority issues.

### **PROTEST REFORM**

The most critical issue to the Administration, including DoD, is to reduce the number of bid protests. Bid protests are highly disruptive of the procurement process. As noted in a recent GAO report on information technology procurements, protested procurements take approximately 30-40% longer to award than contracts that are not protested, and almost 40% of the government's information technology contracts over \$25 million are protested. The Administration's protest reform proposals are intended to improve the efficiency and timeliness of the acquisition process by significantly reducing the number of protests that are filed, while continuing to safeguard the interests of those unfairly treated in the acquisition process.

- ***Establishing a uniform scope and standard of review in all judicial and administrative protest fora is the single most important proposal in the protest area.***

Currently, the General Services Board of Contract Appeals (GSBCA), which has jurisdiction to review the preponderance of information technology (IT) protests, reviews

protests with virtually no limits on the evidence that protesters are able to present to the Board. Protesters are allowed to introduce, and agencies are required to defend their decisions, in light of evidence beyond that contained in the agency's file, even if such evidence was never brought to the attention of the agency nor available to the contracting officer at the time the decision was made. This review is both costly and labor intensive. Suggestions to reform the IT protest process made in a recent Senate report (see Computer Chaos: Billions Wasted Buying Federal Computer Systems Investigative Report of Senator William S. Cohen, October 12, 1994) called into question the benefits of subjecting a deliberative decision by the agency to review based on a new record hastily created in an adversarial proceeding.

Furthermore, the GSBCA reviews government decisions de novo and, unlike review of agency actions in other fora, gives little if any deference to the government action. This “second guessing” standard of review is extremely detrimental to the exercise of sound judgment by a contracting officer, particularly where an award is intended to be based on a “best value” determination. For example:

- In a recent Air Force IT procurement, the GSBCA upheld a protest where the Source Selection Authority chose to rely on the protester's disastrous past performance on prior government contracts to decide to award to a higher priced and technically superior offeror. The government's estimated costs of defending that protest included over \$100,000 in direct costs, with another \$50,000 in government labor costs (legal and other). These amounts do not

include the award of costs to the protester (estimated at \$500,000) nor the costs that will be incurred by the government in conducting a reprocurement.

The Administration's proposal would require that the Board uphold a protest only if the disappointed bidder is prejudiced and either (i) that the decision was obtained in violation of procedures required by law or regulation, or (ii) that the decision was arbitrary or capricious. The Vice President's National Performance Review has endorsed this type of review because it holds decision makers accountable for their actions, without curtailing innovation and creativity through a fear of being second-guessed. It would also help to avoid the type of wasteful effort on protest avoidance (extensive agency documentation and quantification of decision-making process) that the Senate report found was occurring in IT acquisitions.

- ***Providing a means for expeditious and fair resolution of contract protests (and claims) through uniform interpretation (by a single court, rather than several district courts) of laws and implementing regulations precludes forum shopping, and can be accomplished by consolidating court jurisdiction in the Court of Federal Claims and divesting the district courts of bid protest jurisdiction.***
- ***Giving agencies the same authority to proceed with a procurement even if award of the contract has been protested at the GSBICA (just as they have at the GAO) preserves the agencies' (who are in a better position to know the urgency of their requirements) authority to proceed with the acquisition while a protest is pending when the agency determines that it is in the government's best interests.***

Further, the Executive Branch is currently examining agency protest procedures to determine whether they can be enhanced as alternatives to administrative protest fora. The Army Material Command has currently in place a voluntary senior level agency review program for disappointed bidders or offerors. Within 20 days after a protest has been filed with the agency, the agency headquarters must make a final decision on the legitimacy of a contract award. That final decision is binding on the agency and its procuring activities. During this process, award is withheld and work stopped unless there is an agency override for urgent or compelling reasons. Since this program's inception, 290 protests have been reviewed in this venue, each in an average of 15 working days at an average government cost of \$13,686. Only 32 of these AMC decisions have been appealed to the GAO or GSBCA. Of those, 30 were decided in favor of AMC.

#### **EMPOWERING LINE MANAGERS (CONTRACT AWARD ITEMS)**

- *Authorizing contacting officers to conduct a competition among those sources initially selected will permit more effective balancing of competition requirements with efficiency in the contracting process. Potential offerors will know earlier on in the procurement if they do not have a likely chance for award, saving their time, money and resources and those of the agencies.*
- *Allowing agencies to limit the number of offerors in the competitive range to three when the contracting officer determines such action is warranted by considerations of efficiency, would enable agencies to expedite the procurement*

***process, and will allow offerors that do not have a real chance of receiving award to save time and money by being removed sooner rather than later in the process.***

After initially evaluating each offeror's proposal, agencies now, according to General Accounting Office (GAO) and General Services Administration Board of Contract Appeals (GSBCA) decisions, must look for the "natural break" in making a competitive range determination. If there is any question as to whether an offeror should be included in the competitive range, the offeror is kept in the competitive range. The result is that, in order to avoid a protest, agencies generally will not leave any offeror out of the competitive range unless that offeror clearly has no chance whatsoever of being awarded the contract. Thus, many contractors who have no real chance of winning the award continue to incur bid and proposal costs, and the government is forced to expend precious resources evaluating bids that have no chance of winning.

### **STREAMLINING SMALL BUSINESS PROCEDURES**

- ***Amending the Small Business Act to authorize SBA to permit agency contracting activities to award 8(a) contracts directly to small and disadvantaged business firms (eligible program participants) unless the contracting officer or the small and disadvantaged business firm specifically requests the SBA to be a signatory to the contract would significantly streamline and simplify the 8(a) program.***

This delegation need not affect any other assistance that SBA offers to small and disadvantaged businesses. In addition, SBA would be able to revoke the delegation, at

any time prior to the issuance of the solicitation, if such an action is determined to be in the best interest of the program or the small and disadvantaged business firm.

Under current law and regulations, contracts are awarded to small and disadvantaged businesses under the 8(a) program of the Small Business Administration(SBA) by the contracting activity awarding a contract to the SBA and SBA awarding a subcontract to the small and disadvantaged business. Normally, both the contract and the subcontract contain or reference a "tripartite agreement" which, among other things, permits the contracting activity to bypass the SBA for most contract administration matters and gives the small disadvantaged business the benefit of the "changes" and "disputes" clauses.

#### **SAT/FACNET/PROCUREMENT NOTICE**

- *Exempting procurements above the SAT, if accomplished on FACNET, from the procurement notice synopsis requirements, and permitting the establishment of flexible wait periods before contract award, will greatly streamline the procurement process in terms of time and resources required.*

### **DEFENSE UNIQUE PROPOSALS BEING CONSIDERED FOR INCLUDED IN THE ADMINISTRATION'S PROPOSED FY 96 DEFENSE AUTHORIZATION BILL REQUEST**

## **DEFENSE ACQUISITION PILOT PROGRAMS**

***Sound management of our Defense acquisition programs is inhibited by a myriad of laws and regulations which are not applicable to the commercial sector. Authority to use pilot programs to test relief from these requirements is essential to shift to commercial item acquisition and practices by DoD.***

This proposal expands the range of statutory waivers available to FASTA-authorized pilot programs to:

- Permit decisions concerning developmental and operational testing to be made by the milestone decision authority (MDA)not by the OSD OT&E Director;
- Allow use of standard commercial warranties against manufacturer's defects;
- Allow program status reports in a format set by DoD regulation;  
(vice unique Selected Acquisition Report/Unit Cost Report formats);
- Eliminate the separate manpower analysis; and,
- Allow the independent cost estimate to be done at MDA level(vs. OSD CAIG).

It also authorizes one new system, and one facility, pilot program.

## **TESTING**

- ***The testing process must be streamlined to produce greater testing efficiency and affordability when procurement accounts are being drastically reduced, and the SecDef authorized to expand the use of contractors if impartiality is assured.***

## **WAIVERS FROM CANCELLATION OF FUNDS ("M ACCOUNTS").**

- ***Would authorize two categories for which funds will remain available for obligation (without time limit) until the contract purpose is achieved.***



- Satellite incentive fees (funds available until fee is earned).
- Shipbuilding (funds available for contract price adjustments, close-out costs, settlement of claims, etc.).

### **COMPETITIVENESS OF UNITED STATES COMPANIES.**

- ***Many manufacturers of weapons systems for the DoD rely on FMS to keep their production rates at an efficient level, benefiting DoD and the taxpayer by keeping unit prices low. However, these manufacturers must be able to compete fairly on the world market against foreign manufacturers. This proposal would repeal the requirement to recoup non-recurring R&D charges on products sold through the Foreign Military Sales program.***

Mr. Chairman, members of the subcommittee, this concludes my prepared remarks. I would be happy to answer any questions you may have.